

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING
Rules I through IV and the amendment	)	ON PROPOSED ADOPTION,
of ARM 37.8.102, 37.8.103, 37.8.104,	)	AMENDMENT, AND REPEAL
37.8.109, 37.8.116, 37.8.126, 37.8.127,	)	
37.8.128, 37.8.129, 37.8.301, 37.8.801,	)	
37.8.804, and 37.8.816 and repeal of	)	
37.8.106 pertaining to vital statistics	)	
	)	

TO: All Interested Persons

1. On December 3, 2007, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the Wilderness Room, 2401 Colonial Drive, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on November 26, 2007. Please contact Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951; telephone (406)444-9503; fax (406)444-9744; e-mail dphhslegal@mt.gov.

2. The rules as proposed to be adopted provide as follows:

RULE I CERTIFICATE OF BIRTH RESULTING IN A STILLBIRTH

(1) Upon request by either parent, a certificate of birth resulting in a stillbirth must be filed within ten calendar days after the date of the delivery or the date the certificate was requested to be filed. If the delivery meets the definition of a stillbirth as defined in 50-15-101, MCA, the person in charge of the final disposition of the fetus must file a properly completed Montana Certificate of Fetal Death.

(2) If a stillbirth delivery occurs in Montana and a certificate of fetal death has not been filed, additional evidence must be provided to support the facts of the pregnancy, that the delivery resulted in a stillbirth, and that the delivery occurred within this state.

(3) Acceptable examples of evidence of pregnancy include the following:

(a) prenatal record;

(b) a statement from a physician or other health care provider qualified to determine pregnancy;

(c) a report of a home visit by a public health nurse or other health care provider that indicates that the mother was pregnant at the time of the visit; or

- (d) other evidence acceptable by the department.
- (4) Evidence that the birth was stillborn includes the following:
  - (a) a completed and filed Montana Certificate of Fetal Death;
  - (b) a statement from the physician or other health care provider who saw and examined the stillborn child; or
  - (c) other evidence acceptable to the department.
- (5) Evidence of the mother's presence in Montana on the date of delivery includes the following:
  - (a) if the delivery occurred in the mother's residence:
    - (i) a driver's license or a state-issued identification card that lists the mother's current residence;
    - (ii) a rent or mortgage receipt that includes the mother's name and address;
    - (iii) any type of utility, telephone, or other bill that includes the mother's name and address; or
    - (iv) other evidence acceptable to the department.
  - (b) if the delivery occurred outside of the mother's place of residence and the mother is a resident of Montana, such evidence must consist of:
    - (i) an affidavit from the tenant of the premises where the delivery occurred stating that the mother was present on those premises at the time of delivery; and
    - (ii) evidence of the affiant's residence similar to that required in (5)(a); and
    - (iii) evidence of the mother's residence in the state similar to that required in (5)(a); or
    - (iv) other evidence acceptable to the department.
- (6) If the mother is not a resident of Montana, proof that a stillbirth occurred in Montana outside of a health care facility must consist of clear and convincing evidence acceptable to the department.
- (7) The department shall determine the acceptability of all documentary evidence submitted in support of a stillbirth that occurred outside of a health care facility.
- (8) Documents presented must be in the form of the original record or a duly certified copy thereof or a notarized signed statement from the custodian of the record or document attesting to the accuracy of the record.

AUTH: 50-15-102, 50-15-103, 50-15-208, MCA

IMP: 50-15-102, 50-15-103, 50-15-208, MCA

**RULE II AMENDMENT OF VITAL RECORDS** (1) Any requested or court ordered amendment to a filed birth or death record must be submitted in writing to the department. On receipt of a request or court order, the department may immediately notify the appropriate county clerk and recorder to suspend the issuance of the affected record until the department issues a letter of correction.

(2) Application for the amendment of marriage applications, licenses, certificates or marital termination reports (which are not part of the decree) may be made by either party directly to the clerk of district court that issued the marriage license or has on file the marital termination orders. The court shall make the changes and forward a copy of the corrected document to the department.

(3) Except in those cases specified in (4) and (5), a vital record may only be

amended by an order from a Montana district court with appropriate jurisdiction, the original data provider, or those persons authorized by 50-15-121(1), MCA.

(4) The demographic information of a death record may be amended by the next of kin, the informant listed on the death certificate, the funeral director, or the person in charge of the final disposition of the body. If any information provided by the informant is disputed after the record has been filed, changes to the demographic data must be made pursuant to an order from a Montana district court with appropriate jurisdiction.

(5) Applications to amend the medical certification of cause of death shall only be made by the physician who provided the medical certification, or a coroner or state medical examiner if the coroner or medical examiner assumed responsibility for the case. If the cause of death certification is disputed, changes to the cause of death certification must be made pursuant to an order from a Montana district court with appropriate jurisdiction.

(6) The department's supervisory staff may amend a vital record when the nature of the amendment is needed to protect the integrity, accuracy, and validity of the record.

(7) A court order that changes a vital record shall indicate if an amended or substitute record is to be created. If the court order does not indicate a preference, the record will be amended.

(8) Any subsequent change to information previously altered through this process requires an order from a Montana district court with appropriate jurisdiction.

AUTH: 50-15-102, 50-15-103, 50-15-204, 50-15-223, MCA

IMP: 50-15-102, 50-15-103, 50-15-204, 50-15-223, 50-15-403, MCA

### RULE III AMENDMENT PROCESS AND DOCUMENT REQUIREMENTS

(1) Except as noted in [RULE IV], a filed original vital record must be amended by placing a line through the information to be deleted and typing the new information above the line. Electronic records must be amended by overlaying the new information on all electronic images of the record used for certified copies. If the change to the record is to add missing or blank information, the added information must be entered in the appropriate location.

(2) Any certified copy of a vital record issued in the state that was amended or corrected within the first year after filing will not be marked "ALTERED"; however, the summary evidence number and the date of the correction will be indicated. Any vital record amended one year or more after the event will be marked "ALTERED" and will contain the summary evidence number and the date the alterations occurred.

(3) The documentation that justifies the alteration of a vital record must be made available upon request to any person receiving a certified copy.

(4) In cases other than those cited in [RULE IV], the department may amend any portion of a vital record if a requestor submits a correction affidavit.

(a) The correction affidavit must include the following information:

(i) the name of the registrant or registrants appearing on the record;

(ii) the date and place of birth, birth resulting in a stillbirth, death, or fetal death;

- (iii) the specific items on the record that are to be changed, including the information as presently shown and the proposed corrected information;
  - (iv) the relationship of the affiant to the registrant;
  - (v) certification by the affiant that all affected parties concur with the changes; and
  - (vi) supporting documentation provided by the affiant as irrefutable proof that the amendment(s) are correct.
- (b) If not all parties agree to the changes, an order from a Montana district court with appropriate jurisdiction is required.
- (5) The department will determine the number and suitability of the supporting documentation required as irrefutable proof to sustain the accuracy of the amendment(s).
- (6) Supporting documents must not be altered and must meet the following criteria:
- (a) For any person under the age of five, the document(s) must be dated at least one year before the date of the application or within the first year of birth.
  - (b) For any person five years of age or older, the documents must be dated at least five years before the date of application or within three years after the date of birth.
  - (c) No two documents submitted as evidence may be from the same source.
- (7) Upon request, the department will provide a list of suggested supporting documents.

AUTH: 50-15-102, 50-15-103, 50-15-204, 50-15-208, 50-15-223, MCA  
IMP: 50-15-102, 50-15-103, 50-15-204, 50-15-208, 50-15-223, MCA

#### RULE IV. ADOPTIONS, NAME CHANGES, AND SEX CHANGES

- (1) The department will replace the original birth certificate with a new one without indicating that the information was altered in cases of adoption, a determination of paternity, an acknowledgment of paternity, or legitimation.
- (2) In order to establish the replacement certificate, the department must be provided with the following:
- (a) For an adoption:
    - (i) a certified copy of the certificate of adoption; and
    - (ii) a certified copy of the final order of adoption.
  - (b) For a legitimation:
    - (i) a notarized Acknowledgement of Paternity for Legitimation; and
    - (ii) a certified copy of the marriage certificate.
  - (c) For a court order establishing paternity:
    - (i) a certified copy of the court order establishing paternity under 40-6-123, MCA, which must contain:
      - (A) the child's name as it appears on the original certificate;
      - (B) the child's date and county of birth; and
      - (C) the full name, date of birth, and place of birth of the father being placed on the certificate.
    - (d) For an acknowledgement of paternity when the last name of the child is being changed:

- (i) a notarized Acknowledgement of Paternity signed by both parents; and
- (ii) a notarized request for a new certificate signed by both parents.
- (3) Once paternity has been established, the registrant's last name may only be changed through an adoption, legitimation, or court order.
- (4) Except in the cases specified in [RULE III], the amendment of a registrant's given name or surname on a birth certificate may be made only if the department receives a certified copy of an order from a Montana district court with appropriate jurisdiction. The court order that directs the name change must include the registrant's name as it appears on the certificate, the registrant's date of birth, the county of birth, if available, and information sufficient to locate and identify the record to be altered. If the court order directs the issuance of a new certificate, the record will not show amendments, and the new certificate will not indicate on its face that it was altered. The procedure to add a first and/or middle name to a birth record that is more than one year old, as in the case when a child is not named at birth, is regulated under [RULE III].
- (5) The sex of a registrant as cited on a certificate may be amended only if the department receives a certified copy of an order from a Montana district court with appropriate jurisdiction indicating that the sex of an individual born in Montana has been changed by surgical procedure. The order must contain sufficient information for the department to locate the record. If the registrant's name is also to be changed, the court order must indicate the full name of the registrant as it appears on the original birth certificate and the full name to which it is to be altered. If the order from the court directs the issuance of a new certificate that does not show amendments, the new certificate will not indicate on its face that it was altered. If the sex of an individual was listed incorrectly on the original certificate, refer to [RULE III].

AUTH: 50-15-102, 50-15-103, 50-15-204, 50-15-223, MCA  
IMP: 50-15-102, 50-15-103, 50-15-204, 50-15-223, MCA

3. The rules as proposed to be amended provide as follows. New matter is underlined. Matter to be deleted is interlined.

37.8.102 DEFINITIONS In addition to the definitions contained in 50-15-101, MCA, the following definitions apply to this chapter:

(1) "Amendment" means alteration or addition of any item on the face of a vital record after it is on file with the department, ~~or in a county clerk and recorder's office, or with a clerk of district court.~~

(2) "Ashes" which are the result of a cremation of a human body are considered the same as a dead body as defined in 50-15-101(3), MCA.

(2) and (3) remain the same but are renumbered (3) and (4).

~~(4) (5) "Certifying official" means an individual authorized to issue a certified copy of a vital record by the department's Office of Vital Statistics or a county clerk and recorder.~~

(6) "Department" means the Department of Public Health and Human Services, Office of Vital Statistics.

(7) "Filing date" means the date a vital record is accepted for registration by

the department.

(5) through (7) remain the same but are renumbered (8) through (10).

(11) "Summary of evidence" means a number assigned to an affidavit, administrative order, or court order which is used to track the evidence provided to amend, correct, or reissue a vital record.

(12) "Supporting documentation" means any document required as evidence for the filing of a delayed vital record or for verification of changes to original data or adding missing data on a filed vital record.

AUTH: 50-15-102, 50-15-103, MCA

IMP: 50-15-101, 50-15-103, MCA

37.8.103 LOCAL REGISTRAR DUTIES PRESERVATION OF COPIES OF RECORDS (1) ~~After a local registrar has received, numbered, and signed a death, birth, or fetal death certificate, the registrar shall file the original with the department and one copy with the county as required by 50-15-109, MCA. The local registrar must retain a triplicate copy of each paper certificate, which must be filed to be easily accessible for reference. A local registrar accepting a paper vital record for filing shall add the filing date and sign a death, birth, fetal death, or stillborn certificate. The registrar shall forward the original document to the department and one duplicate to the county clerk and recorder as required by 50-15-109, MCA.~~

(2) The local registrar shall retain one duplicate, which must be easily accessible for reference. The local registrar may not further copy or provide any copies of the retained duplicate.

~~(2) (3)~~ A registrar must retain for two years each copy of a paper certificate recorded in accordance with 50-15-109, MCA. After two years, the local registrar may request written permission from the department to shall destroy the triplicate copy of the certificates. The destruction of any certificate must be reported in writing to the department.

~~(3) Triplicate copies may not be destroyed unless the department gives written permission to do so.~~

(4) remains the same.

(5) A paper filing occurs when the local registrar accepts the certificate. An electronic filing occurs when the record passes all validation checks and is assigned a state file number. If both a paper certificate and an electronic filing exist, the electronic filing is considered the original certificate and it must be filed first.

~~(5) (6)~~ When leaving the position of local registrar, the outgoing registrar must deliver all records, manuals, and materials to the succeeding registrar or to another person designated by the department.

AUTH: 50-15-102, 50-15-103, MCA

IMP: 50-15-102, 50-15-103, 50-15-109, 50-15-124, MCA

37.8.104 AUTHORIZED FORMAT FOR SUBMISSION OF A VITAL RECORD (1) remains the same.

(2) Each vital record application and certificate must be typed or plainly written in unfading black ink that is legible on all copies or must be completed using

computer printers that produce dense and legible characters in black. The characters entered onto these forms must be adequate for high quality reproduction of all parts of the forms by microfilming or photocopying and may not contain any alterations or obliteration of the original data.

(3) remains the same.

AUTH: 50-15-102, 50-15-103, MCA

IMP: 40-1-107, 50-15-102, 50-15-103, 50-15-121, 50-15-124, MCA

#### 37.8.109 REGISTRAR'S MONTHLY STATEMENT OF CERTIFICATES

FILED (1) To facilitate and to ensure proper accounting, local registrars shall submit to the Department, on a monthly, weekly, or biweekly basis, statements of the certificates that have been filed in the registrar's county. certificates filed on or before the fifth day of each month on blank forms supplied by the department If submitted on a monthly basis, the local registrars shall submit the statements on or before the fifth day of each month. The statements must be recorded on forms supplied by the department, and shall retain copies for their own files. The statement and must indicate the number of birth, death, and fetal death certificates filed in the registrar's county during the prior month and forwarded to the department. If none no certificates were filed, the statement must so indicate.

AUTH: 50-15-102, 50-15-103, MCA

IMP: 50-15-102, 50-15-107, 50-15-109, MCA

37.8.116 FEES FOR CERTIFICATION, FILE SEARCHES, AND OTHER VITAL RECORDS SERVICES (1) Fees in this rule apply to the department, the county clerk and recorders, or any vital record issuance agency. County clerk and recorders will retain for use in their respective counties any amount specified in 7-4-2631, MCA or this rule. The difference between the fees collected by the county clerk and recorder, and the amount specified by the department, must be forwarded to the department and be deposited as specified in 50-15-111, MCA.

(4) (2) The fee for a search and issuance of a certified copy (photocopy or computer-produced) of a birth certificate, a death certificate, a fetal death certificate, a certificate of birth resulting in a stillbirth, an acknowledgment of paternity, or a delayed birth registration is \$12 \$10 for the first copy of a specific request and \$5 for each additional copy of the same record requested at the same time as the first copy.

(3) The fee for a search and issuance of a noncertified informational copy of a birth certificate, death certificate, fetal death certificate, certificate of birth resulting in a still birth, acknowledgment of paternity, delayed birth registration, or documentary evidence used to amend a vital record is \$8. Counties shall forward \$1 of each \$8 fee to the department.

(4) The fee for a certified copy of documentary evidence used to amend a vital record, an acknowledgement of paternity, or any other vital record document is \$8.

(2) (5) The department shall charge a fee for nonincidental documents or a paper search of files or records that have been filed within a period of five years or

~~less without copying, is of \$10 \$5 per name for a record search within any period of five years or less. If the record is not located, the fee will not be refunded. If the request is for documents filed more than five years previous, an additional fee of \$1 per year over the first five years will be charged. Counties must forward \$1 of each records search fee to the department.~~

(3) through (5) remain the same but are renumbered (6) through (8).

~~(6) (9)~~ The fee for filing a delayed registration of a vital record is \$25. A certified copy of the delayed certificate will be provided ~~to the person filing the delayed registration.~~

~~(7) (10)~~ The fee for amending or correcting a vital record after one year from the date of filing is \$15. If a court orders the creation of a replacement record, the fee is \$25. A certified copy of the amended record will be provided ~~to the person requesting the amendment or correction.~~

(11) The fee for creating a replacement birth certificate after a legitimation, paternity determination, acknowledgement of paternity, or court order establishing paternity is \$25. A certified copy of the record will be provided.

~~(8) (12)~~ The fee for a search of the putative father registry is ~~\$10~~ \$15 per name.

(9) remains the same but is renumbered (13).

~~(10) (14)~~ The fee for producing aggregate statistics is ~~\$25~~ \$35 per hour for programming and processing if that processing takes more than half an hour's work ~~on existing programs.~~

~~(11) (15)~~ The fee for a disinterment permit is ~~\$5~~ \$10. The local registrar shall collect the fee, ~~\$2 of which must be remitted and forward \$5 of the fee to the department.~~

(16) Unless negotiated by contract, the fee for the verification of a vital event by a non-Montana government agency, subdivision of a non-Montana government agency, or contractor for a government agency will be \$8 per request.

~~(12) (17)~~ Overpayment of a required fee received ~~in the Office of Vital Statistics by the department~~ will be refunded if in excess of \$5, ~~and any~~ Any overpayment of less than \$5 will be refunded; if the applicant requests ~~it~~ the refund in writing within one year after the payment to the department.

(18) If a record has been located but the criteria of ARM 37.8.126 and 37.8.127 are not met, the request is cancelled and no refund will be issued. Fees will be retained for the cost of the record search.

AUTH: 50-15-102, 50-15-103, 50-15-111, MCA

IMP: 42-2-218, 50-15-111, MCA

37.8.126 ACCESS TO RECORDS (1) Anyone who submits a completed ~~state-approved or county~~ application shall provide proof of identification before ~~may obtain obtaining~~ a certified or noncertified copy of a vital record ~~death certificate.~~

(2) If a death certificate lists the cause of death as "pending autopsy" or "pending investigation", a certified or noncertified copy will be issued which has the cause of death information removed may not be issued.

~~(2) (3)~~ The following people may obtain a certified copy of a birth record:

(a) a registrant, upon establishing ~~their~~ the registrant's identity to the



satisfaction of the certifying official;

(b) a spouse, child, or parent of a registrant to whom the requested record pertains, upon establishing ~~their identity~~ identification and relationship to the registrant to the satisfaction of the certifying official;

(c) an individual having legal guardianship of the registrant, upon submitting a copy of a legal document showing ~~establishment~~ proof of the guardianship;

(d) an individual who needs a certified copy to protect ~~their~~ his or her personal or property rights, upon submitting a notarized or certified document that states that the applicant is required to obtain a certified copy in order to protect the applicant's personal or property rights; or

(e) remains the same.

~~(3)~~ (4) The following people may not receive a copy, certified or uncertified, of a registrant's birth records:

(a) a former spouse whose marriage to the registrant was terminated through divorce, annulment, or invalidation ~~and who has subsequently remarried; unless the former spouse can demonstrate a need to protect individual or property rights; or~~

(b) a natural parent of an adopted child when the parent does not have custody of parental rights to that child.

~~(4)~~ (5) Birth certificates may be released to the public no earlier than Anyone who requests a birth certificate of an individual who was born 30 years after the date of birth, or more earlier will be issued a noncertified copy of the certificate. Only noncertified copies will be released.

(6) A certified copy of certificate of birth that resulted in a stillbirth may only be issued to the following:

(a) either parent if listed on the certificate; or

(b) those persons listed in 50-15-121(1), MCA, upon receipt of an order from a Montana district court with appropriate jurisdiction.

(7) Informational noncertified copies of a certificate of a birth that resulted in a stillbirth may be released to the public no earlier than 30 years after the date of delivery.

~~(5)~~ (8) A clerk of the district court may issue a certified copy of a marriage or marital termination record to anyone listed in ~~(2)~~ (3) after receiving a completed application for the record and establishing the identity of the requestor and the requestor's relationship to the registrants.

(6) and (7) remain the same but are renumbered (9) and (10).

AUTH: 50-15-103, 50-15-121, 50-15-122, MCA

IMP: 50-15-103, 50-15-121, 50-15-122, MCA

37.8.127 APPLICATION FOR COPY OF VITAL RECORD (1) Each application for a certified copy of a vital record should be on a state department-approved application form. Written applications not using the department-approved application form must be in writing and contain the applicant's name, signature, address, and the purpose for which the certified copy is needed. All applications must include either a copy of the requestor's valid identification, or the requestor's signature on the application must be notarized.

(2) through (3)(c) remain the same.

(4) Upon request, the department will provide a list of acceptable forms of identification needed from the requestor.

AUTH: 50-15-102, 50-15-103, 50-15-121, 50-15-122, MCA

IMP: 50-15-103, 50-15-121, 50-15-122, MCA

### 37.8.128 CONTENTS OF CERTIFIED AND NONCERTIFIED COPIES

(1) through (2)(e) remain the same.

(g) the names of the registrant's parents. If the mother's or father's name is not included on the filed document, the phrase "NOT RECORDED" must be displayed on the certified copy where the mother's or father's name would normally appear; and

(h) if the registrant of a birth record is deceased, each copy must clearly indicate "DECEASED" on the face of the copy.

(3) remains the same.

(4) Each certified copy of a birth that resulted in a stillbirth record must include, in addition to the items in (1):

(a) the full given name of the registrant if provided on the record;

(b) the surname of the registrant along with any generational identifier present on the original filed document such as Jr., Sr., etc.;

(c) the date of delivery in literal format;

(d) the county of delivery;

(e) the sex; and

(f) the date the record was filed, in literal format.

(4) remains the same but is renumbered (5).

AUTH: 50-15-102, 50-15-103, 50-15-121, 50-15-124, MCA

IMP: 50-15-103, 50-15-121, 50-15-122, 50-15-124, MCA

37.8.129 FORMAT AND PAPER REQUIREMENTS FOR CERTIFIED COPIES (1) With the exception noted in (2), ~~effective February 15, 2003~~, all certified copies of birth, death, fetal death, and stillbirth records must be issued on paper that contains the following security features:

(a) sensitized security paper;

(b) background security design;

(c) copy-void pantograph;

(d) consecutive numbering;

(e) prismatic printing;

(f) complex colors; ~~and~~

(g) watermark; ~~i~~

(h) intaglio border; and

(i) embossed hologram.

~~(2) A certified copy may be issued on non-secure paper only if the copy contains a tamper-proof seal and all of the information, signatures, and seals required by ARM 37.8.128. Any alternate method of issuing a certified copy must be approved by the department, in writing, before its official use.~~

(3) remains the same.

(4) Each certified copy of a vital record issued in Montana must contain the following certification and issuance statements at the bottom:

This certifies that this document is a true duplication of the original information on file with the Department of Public Health and Human Services.	Signature or facsimile <del>typed name</del> Certifying official's title
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AUTH: 50-15-102, 50-15-103, 50-15-122, 50-15-124, MCA  
IMP: 50-15-102, 50-15-103, 50-15-121, 50-15-122, 50-15-123, 50-15-124,  
MCA

37.8.301 CERTIFICATE OF BIRTH (1) through (5) remain the same.

(6) All births must be filed using either a current paper form ~~or an electronic image of the most current Montana certificate of live birth form provided by the department or Montana's Electronic Birth Registration System.~~

(7) and (8) remain the same.

(9) If a birth occurs somewhere other than in a health care facility and is not attended by a physician or a licensed midwife, and the birth certificate is filed before the first birthday, additional evidence in support of the facts of the birth is required. A certificate for the birth must be completed and filed by the individual responsible for filing the certificate as stated in 50-15-221(4), MCA, and include evidence of the pregnancy, evidence that the infant was born alive, and evidence the birth occurred within this state, as stated in (10) through (12).

(10) Evidence of a pregnancy is:

(a) a prenatal record;

(b) a statement from a physician or other health care provider qualified to determine pregnancy;

(c) a report of a home visit by a public health nurse or other health care provider that indicates the mother was pregnant at the time of the visit; or

(d) other evidence acceptable by the department.

(11) Evidence that the infant was born alive includes:

(a) a statement from the physician or other health care provider who saw or examined the infant;

(b) an observation of the infant during a home visit by a public health nurse;  
or

(c) other evidence acceptable to the department.

(12) Evidence of the mother's presence in Montana on the date of birth includes:

(a) if the birth occurred in the mother's residence:

(i) a driver's license or a state-issued identification card that lists the mother's current residence;

(ii) a rent or mortgage receipt dated near the date of birth that includes the mother's name and address;

(iii) any type of utility, telephone, or other bill dated near the time of birth that includes the mother's name and address; or

- (iv) other evidence acceptable to the department.
- (b) if the birth occurred outside of the mother's place of residence and the mother is a resident of Montana, such evidence must consist of:
  - (i) an affidavit from the tenant of the premises where the birth occurred, that the mother was present on those premises at the time of birth;
  - (ii) evidence of the affiant's residence similar to that required in (12)(a)(i);
  - (iii) evidence of the mother's residence in the state similar to that required in (12)(a)(i); or
  - (iv) other evidence acceptable to the department.
- (13) If the mother is not a resident of Montana, such evidence must consist of clear and convincing evidence acceptable to the department.
- (14) The department will determine the acceptability of all documentary evidence submitted in support of a birth outside a health care facility. Documents presented must be in the form of the original record or a duly certified copy thereof or a notarized signed statement from the custodian of the record attesting to the accuracy of the record.

AUTH: 50-15-102, 50-15-103, MCA

IMP: 50-15-102, 50-15-103, 50-15-109, 50-15-112, 50-15-113, 50-15-201, 50-15-124, 50-15-202, 50-15-221, MCA

37.8.801 DEATH CERTIFICATE (1) A certificate of death for each death that occurs in Montana must be completed and filed using either a current Montana certificate of death form or Montana's Electronic Death Registration System.

(2) remains the same.

(3) The person in charge of the final disposition of the dead body shall present the death certificate to the physician, advanced practice registered nurse, or coroner for cause of death certification within three working days after being notified of the death or receiving the authorization for removal, transportation, and final disposition of a dead body, which ever occurs first.

(4) The certifying physician, advanced practice registered nurse, or coroner shall complete and return the death certificate to the person in charge of the final disposition of the body within 48 hours of receipt. If the cause of death certification is pending autopsy results, then the cause of death must be listed as "pending autopsy results". When the final results are received, they must be sent to the department using a correction affidavit.

(5) remains the same.

(6) For the purpose of the death certificate, any professional registered nurse licensed by the state of Montana may provide pronouncement of death information.

(6) and (7) remain the same but are renumbered (7) and (8).

AUTH: 50-15-102, 50-15-103, 50-15-403, MCA

IMP: 50-15-109, 50-15-124, 50-15-403, 50-15-405, MCA

37.8.804 COURT ORDERED FILING OF BIRTH OR DEATH CERTIFICATE

(1) Only a Montana ~~or federal~~ district court of competent with appropriate jurisdiction may order a birth or a death certificate be filed ~~issued~~ for a birth or a

death that occurred within Montana.

(2) A local registrar may not complete a court ordered birth certificate. The court order must be submitted directly to the department's ~~vital statistics office~~, whereupon a certificate will be prepared and placed on file.

(3) A local registrar may not complete a court ordered death certificate. The court order must be submitted directly to the local coroner, who will prepare and file the certificate with the department's ~~vital statistics office~~.

(4) When a court order from a Montana ~~or federal~~ district court of ~~competent with appropriate~~ jurisdiction directs the preparation and filing of a birth certificate, the information necessary to complete the certificate must be specified in the order.

(5) When a death is legally presumed but not confirmed, as in the case where the body has not been found, a death certificate may be filed only by the order of a Montana district ~~or federal~~ court of ~~competent with appropriate~~ jurisdiction directing the local coroner to prepare and file a death certificate with the department and specifying the information necessary to complete the certificate.

AUTH: 50-15-102, 50-15-103, MCA

IMP: 50-15-204, 50-15-404, MCA

37.8.816 DISINTERMENT PERMITS (1) and (2) remain the same.

(3) The request for disinterment must be made by the decedent's next of kin, by ~~court~~ an order from a Montana district court with appropriate jurisdiction, or by a public official authorized by law to make such a request. The endorsement on the permit must indicate the source of authority for the request and reasonable cause for the disinterment. If there is a dispute about a disinterment, and all affected parties do not concur, an order from a Montana district court with appropriate jurisdiction directing the disinterment is required.

(4) The permit consists of five copies that must be distributed as follows:

(a) ~~†~~The original copy must accompany the body for use by the receiving cemetery or crematory;

(b) a copy must be retained by the cemetery where the disinterment occurs, by the applicant to whom the permit is issued, and by the local registrar; ~~and~~

(c) a copy must be sent to the department.

(5) remains the same.

AUTH: 50-15-102, 50-15-407, MCA

IMP: 50-15-407, MCA

4. ARM 37.8.106, AMENDMENT OF VITAL RECORDS, as proposed to be repealed is on page 37-1364 of the Administrative Rules of Montana.

AUTH: 50-15-102, 50-15-103, 50-15-204, 50-15-223, MCA

IMP: 50-15-102, 50-15-103, 50-15-204, 50-15-223, MCA

5. The rationale for these rules is as follows:

## RULE I

The department developed Rule I to comply with Senate Bill 518, enacted by the 2007 Montana Legislative Session. The new law, contained in 50-15-208, MCA, requires the department to issue certificates of birth that have resulted in stillbirth starting on January 1, 2008. The law also requires the department to adopt rules for:

- (a) the time by which a certificate must be filed after the stillbirth;
- (b) the evidence required to establish the facts of the stillbirth; and
- (c) the information required on the certificate.

The certificate of birth resulting in stillbirth is optional and may be issued upon the request of a parent. A certificate of fetal death is required if the fetus has reached 20 days of gestation, which is the same definition of a stillbirth specified in Senate Bill 518, 50-15-101, MCA, 2007 Laws of Montana, Chapter 474. Fulfilling the requirements for a certificate of fetal death provides enough information and proof for the stillbirth certificate. In situations where fetal death certificates are not filed for any reason, evidence is needed to prove that the stillbirths happened in Montana. Such evidence may be similar to that required for medically unattended live births. The department listed the evidence in Rule I.

Rule I is necessary to carry out the requirements of Senate Bill 518, 50-15-208, MCA. The department needs adequate proof that a delivery resulting in a stillbirth happened in Montana when the delivery occurs outside of a health care facility or was not medically attended. This rule prevents the issuance of certificates when the stillbirth events never happened.

#### RULES II, III, and IV

The department proposes to have these new rules replace ARM 37.8.106, slated for repeal. The new rules address altering and amending vital records. Due to the numerous situations where amending vital record information may be needed, the department divided its requirements into three shorter rules for clarity.

Section 50-15-204(3), MCA, requires the department to develop rules "establishing the circumstances under which vital records may be corrected or amended and the procedure to correct or amend those records."

Rule II provides the general requirements for all types of vital record amendment and corrections. Sections (2) through (6) clarify who may request changes to a vital record, and the appropriate process. Section (7) addresses court-ordered changes. Section (8) provides the recourse that is available when the information is disputed after the record has been filed.

Rule III standardizes how the department and local registrars amend or replace information on birth or death certificates. The uniform process helps increase the likelihood that certificates altered by the department or a registrar will be acceptable to other government agencies that use certificates to validate births or deaths.

Section (5) establishes the types of supporting documents needed to prove a birth or death.

Rule IV provides procedures for adoptions, name changes, and sex changes. These unique matters result in the issuances of new birth certificates without amending the originals.

Overall, the new rules and the repeal of ARM 37.8.106 are needed to clarify the procedures to correct or amend a vital record. Splitting the requirements into three rules eliminates any ambiguity existing currently in ARM 37.8.106. Also, the rules standardize the correction/amendment process, and assure that the amended or replaced vital records are legitimate if their authenticity is challenged.

Alternatives considered included making extensive amendments to ARM 37.8.106. The alternative was rejected because of the vast changes of the requirements. Amending ARM 37.8.106 would have resulted in one large rule that would have been hard to comprehend.

ARM 37.8.102. The changes to this rule clarify the definition of an "amendment" for purposes of Rules II, III, and IV, and add several definitions to aid in the administration of the vital records system. The term "ashes" was added to accommodate cremations for purposes of the death certificate. The definition of "department" was added to clarify that the phrases "Office of Vital Statistics" and "Vital Statistics Office" found throughout the rules mean the same entity.

ARM 37.8.103. The department made changes to this rule to standardize both paper and electronic filing requirements. Section 50-15-109(2), MCA, amended by the 2005 Legislature, allows electronic filing. The statute no longer requires the retention of paper copies of vital records if they are filed electronically.

Changes to the rule also require the local registrar to destroy any paper record older than two years and report the destruction to the department. The current rule provides for the destruction of records only upon receiving permission to do so. This requirement has led many local registrars to unnecessarily retain copies of birth and death records that have not been amended or altered.

The revisions to ARM 37.8.103 are necessary to clarify the duties of the local registrars regarding record retention and destruction in this age of electronic filing.

ARM 37.8.104. Section (2) requires that the original information on vital records not be altered or erased. All alterations must be tracked in order to identify how and when the amendments were made. This rule is needed to prevent forgeries.

ARM 37.8.109. The change to this rule allows local registrars to submit to the department their statements on the number and type of certificates filed with the registrars on a weekly or biweekly basis. The change allows more time flexibility for local registrars.

ARM 37.8.116. This rule contains fee changes that are applicable to the department and local registrars. Section 50-15-111(1), MCA, directs the department to set fees by rule for:

- (a) certified copy of certificates or records;
- (b) searches of files or records when a copy is not made;
- (c) copies of information provided for statistical or administrative purposes as allowed by law;
- (d) the replacement of a birth certificate subsequent to adoption, legitimation, paternity determination or acknowledgement, or court order.
- (e) filing a delayed registration of a vital event;
- (f) amending a vital record, after one year from the date of filing; and
- (g) other services specified in statute or by rule.

In ARM 37.8.116(1), the department clarifies that the ensuing fees in the rule apply to all vital record issuing agencies in the state. The section also specifies how the fees must be distributed between the counties and the state.

By amending section (1), the department intends to have uniform fees between the counties and the department. Currently, the state has two disparate fee structures that are vastly different.

For instance, 7-4-2631, MCA, specifies the portion of the fees that counties may retain for their own use. The law specifies that counties will charge \$5 for a certified copy of a birth certificate, and \$3 for a certified copy of a death certificate. Counties are to send the difference between its fee and the state's fee to the department for deposit in a special revenue account for the maintenance, preservation, and administration of the statewide vital statistics system.

Over the years, however, the department has had to increase its fees in ARM 37.8.116 to cover all of the costs for the maintenance and administration of the vital statistics system. Besides maintaining its own system, the department provides to the counties application forms and security paper for certificates, maintenance for the state-wide electronic data system, and training. As a result, disparities between the department and county fees currently exist. For instance, the current fees are \$12 for a state-issued birth certificate compared to \$5 for a county-issued one, and \$12 for a state-issued death certificate versus \$3 for a county-issued one. The department believes the proposed fee structure specified in section (1) will establish fee parity and provide funding for the vital record system that is used by the department and counties.

Section (2) of ARM 37.8.116 contains a reduction in fees, from \$12 to \$10, for certified copies of certificates.

Section (3) specifies the fee for an informational copy of a record regardless of the search circumstance. This fee is being reduced from \$10 to \$8 per copy. Section (4) is added to set the fee for obtaining certified copies of documentary



evidence.

Section (5) sets the fee for record searches when a copy of the record is not made. The search fee is being reduced from \$10 to \$5.

In section (9), the fee for filing a delayed registration remains the same at \$25.

Sections (10) and (11) have been altered to reflect the requirements in 50-15-111, MCA. That statute requires the department to prescribe fees by rule for the issuance of a replacement birth certificate subsequent to adoption, legitimation, and paternity determination, acknowledgement, or court order.

The fees of \$15 and \$25 are based on the difference in the amount of work needed for amending records as opposed to creating replacements. Amending existing records entails less work in that the original record remains intact, the old information is struck, and new or corrected information is added. To substitute a record, any retained information is entered on a new record, and all original documents are recalled, placed in a sealed file, and stored indefinitely. The fees specified in sections (10) and (11) are commensurate with the amount of work required.

Sections (12) and (14) include raising the fee to conduct a search of the putative father registry and for the programming needed to produce aggregate statistics. The fee increases of \$5 for putative father searches and \$10 for compiling statistics are needed to cover the growing costs for processing and programming.

Section (15) contains a \$5 addition to the fee for disinterment permits. The fee has not been changed since 1981 even though administrative and accounting expenses incurred in providing the service have increased through the years. The increased fee enables the office to recover the costs of providing the permits.

Section (16) applies to non-Montana governmental and out-of-state agencies that require verification of the information on a certificate. Federal agencies, as well as private entities such as insurance companies and hospitals that want to purge their old files, submit lists of birth and death certificates to the department and ask for verification of the information. Because no specific fee currently exists for this service, the entities and agencies have been charged \$10 per verification, the same cost for a noncertified copy of a certificate. Section (6) designates a specific fee for vital record verification, listed as \$8. The fee is less than \$10 because copies of certificates are not requested.

The department does not charge intrastate agencies for verification information because to do so would be like billing itself. Transferring funds between the agencies entails journal entries, increased time, and increased costs to the agencies.

Section (18) allows the department to retain, not refund, fees for providing services

to noncomplying requests for information and copies. On average, there are between 75 and 100 issuance requests per year that do not meet the minimum application requirements. Currently, requestors that do not meet these requirements can request a refund after the department staff have searched for the requested record and spent time and resources contacting the requestors for additional information or documentation. After the department's work, the requestor may cancel the request or not follow through and provide what is necessary.

Retention of the fees for noncomplying requests is needed to cover the department and counties' expenses. If retention of the fees is allowed, requestors will receive prior notice on the initial applications about the fees being nonrefundable and retained for administrative costs.

Additional changes to ARM 37.8.116 clarify the applicability of the various existing fees and rules. The fees remain the same and should have no additional fiscal impact.

The changes to ARM 37.8.116 are necessary because the department provides and covers all costs for the administration of Montana's vital records system, including:

- purchasing security paper and distributing it to the counties;
- developing, printing, and distributing vital record forms;
- developing, implementing, and maintaining electronic data acquisition and issuance systems; and
- training for the use of the system.

Because of the current fee structure, only those persons requesting copies or services from the department pay for the operating and administrative costs associated with the statewide system. The intent of the proposed fee structure is to have a uniform statewide system where the costs are shared between the state and counties.

The changes to this rule will have the following fiscal impact:

Assumptions used:

(1) The fee for the issuance of certified copies is \$12 for the first copy and \$5 for each additional copy. It is estimated that about 39% of the requests involve additional copies; thus, the table below estimates that there were 11,717 single requests (9374 birth and 2343 death) and 4570 requests for additional copies (3656 birth and 914 death). Records search requests are also impacted by the proposed fees; therefore, it is estimated that there were 564 single-copy records search requests and 226 additional copy requests. It is unknown exactly how many certificates are issued by the counties. To calculate the fiscal impact of a uniform fee, the number of birth and death certificates that were issued from the electronic issuance system in 2006 (61,420 birth and 52,778 death) was used. The numbers do not account for copies of original birth certificates issued and maintained by the

county clerk and recorders' offices.

(2) Since a record search usually results in an informational copy being issued, the figures used in the chart below demonstrate the fiscal impact of the proposed fees for searches and copies. It is unknown how many informational copies are issued by counties, but it is estimated that in 2006 the ratios of county and state-issued certified copies was 75% county and 25% state, thus it is estimated that 2370 county and 790 state informational copies were issued.

(3) To compute the impact of a search when no record is copied, it is estimated that an average of four no-find letters are sent by the department each week, which is 624 letters a year. By using the 25/75 ratio to estimate the number for the county, the county would be conducting 1872 searches per year.

(4) The disinterment fee is \$5, with \$3 retained by the county and \$2 sent to the state. The new fee will be \$10, with \$5 retained by the county and \$5 sent to the state.

(5) It is unknown how many court orders will require the creation of replacement records. For fiscal impact, it is estimated that 50% of all court orders to amend vital records will require replacements.

(6) The figure in parenthesis is the full fee. The number outside of the parenthesis is the amount of each transaction that will be either retained by the county or sent to the state. This figure is used to calculate the fiscal impact on the state or counties.

<b>State Fiscal Impact</b>					
<b>Service</b>	<b>Number Estimated per Fiscal Year (FY)</b>	<b>Current Fee</b>	<b>Current Annual Impact per FY</b>	<b>Proposed Fee (Total Fee) and Fee Retained by State</b>	<b>Impact of proposed Fees FY 2008</b>
Issuance (Birth)	9,374	\$12.00	\$112,488.00	\$10.00	\$93,740.00
Additional Copies (Birth)	3,656	\$5.00	\$18,280.00	\$10.00	\$36,560.00
Issuance (Death)	2,343	\$12.00	\$28,116.00	\$10.00	\$23,430.00
Additional Copies (Death)	914	\$5.00	\$4,570.00	\$10.00	\$9,140.00
Informational copies	564	\$10.00	\$5,640.00	\$8.00	\$4,512.00
Additional Copies	226	\$5.00	\$1,130.00	\$8.00	\$1,808.00
Search (No Copy)	208	\$10.00	\$2,080.00	\$5.00	\$1,040.00
County Issuance Birth (State impact only)	61,420	0	0	(\$10.00) \$5.00	\$307,100.00
County Issuance Death (state impact only)	52,778	0	0	(\$10.00) \$7.00	\$369,446.00
County Issuance Informational copy	2370	0	0	(\$8.00) \$1.00	\$2,370.00
Search (Not Copy) County	624	0	0	(\$5.00) \$1.00	\$6,240.00
Adoption	859	\$25.00	\$21,475.00	\$25.00	\$21,475.00
Establish paternity	64	\$25.00	\$1,600.00	\$25.00	\$1,600.00
Court ordered (Amendment)	59	\$15.00	\$885.00	\$15.00	\$885.00
Court ordered (New	59	\$25.00	\$1,475.00	\$25.00	\$1,475.00

record)					
Correction to a Record	458	\$15.00	\$6,870.00	\$15.00	\$6,870.00
Open a sealed File	87	\$25.00	\$2,175.00	\$25.00	\$2,175.00
Putative Father Search	30	\$10.00	\$300.00	\$15.00	\$450.00
File a delay certificate	13	\$25.00	\$325.00	\$25.00	\$325.00
Verification of a vital event	57	\$0.00	\$0.00	\$8.00	\$456.00
Legitimation	26	\$25.00	\$650.00	\$25.00	\$650.00
Disinterment Permit (State only)	30	(\$5.00) \$2.00	\$60.00	(\$10.00) \$5.00	\$150.00
<b>Total Impact</b>			<b>\$206,741.00</b>		<b>\$888,153.00</b>

ARM 37.8.126. The department retained this rule's general requirements regarding people who are authorized to obtain copies of vital records.

Under (4)(a) of ARM 37.8.126, the department added that former spouses may be allowed access to birth records only if they demonstrate a need for the information to protect individual or property rights. Such disclosure is allowed in 50-15-121(1), MCA.

The department added sections (6) and (7) pertaining to the disclosure of certificates of birth resulting in stillbirth. The department provides the same restrictions as those for birth records as stated in 50-15-121 and 50-15-122, MCA.

ARM 37.8.127. The changes to this rule clarify the application procedures needed to request copies of vital records. Requiring the county clerk and recorder offices to use a state-approved application as required in 50-15-121(2), MCA, provides for uniformity in the request process, and attempts to assure that all legal requirements were met for the access of specific records.

ARM 37.8.128. The department's additions to this rule include clarification regarding what is to be done when the mother's name is missing from the birth record. This may occur in a single parent adoption. The additions also provide that if the registrant is deceased, "DECEASED" must be indicated on the face of the birth certificate prior to its issuance.

Also added are the requirements for the contents of a certificate of birth that resulted in a stillbirth. The department believes the changes meet the requirements of Senate Bill 518, 50-15-208, MCA, which states that the department must adopt rules specifying the contents of certificates of birth resulting in a stillbirth.

ARM 37.8.129. The department removed the effective date of February 15, 2003, which has since passed. The department also removed the option of issuing certified copies of records on plain paper. In doing so, the department seeks to prevent forgeries.

ARM 37.8.301. The rule changes include rewording a part of the rule to allow for the electronic filing of birth certificates. The changes also specify what additional documentation is needed to establish the facts of a birth that takes place outside of a

birthing facility or was unattended. This documentation is required by 50-15-221(4), MCA, which states:

The department shall, by rule, determine what evidence may be required to establish the facts of birth if the birth occurs at a place other than a health care facility. In accordance with rules promulgated by the department, the certificate must be prepared and filed by one of the following persons in the indicated order of priority in subsections (4)(a) through (4)(e):

- (a) the physician or the physician's designee or a midwife licensed pursuant to Title 37, Chapter 27, in attendance at or immediately after the birth;
- (b) a person in attendance at or immediately after the birth;
- (c) the father or the mother;
- (d) in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred; or
- (e) the local registrar, if 50-15-202 applies.

ARM 37.8.801. The rule change clarifies that a professional licensed nurse may provide pronouncing information for death certificates. Frequently, the certifier of the cause of death is not present at the death, therefore the certifier must rely on information provided by an attending professional nurse. The rule change also reflects that death certificates may be electronically filed through the statewide registration system.

ARM 37.8.804. The department replaced the verb "issue" with "file". This change reflects the fact that a court orders a birth or death certificate to be filed, not issued.

ARM 37.8.816. The change to this rule addresses problems that have occurred when families do not agree about the disinterment of a body. The disputes must be resolved in a state district court.

Fiscal impact. With the exception of the changes made to ARM 37.8.116, there is no fiscal impact associated with the new rules, the repeal of ARM 37.8.106, or the amendments.

6. The department intends the rule changes to be applied effective January 1, 2008.

7. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on December 6, 2007. Data, views, or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice as printed in the Montana Administrative Register, but advises all concerned persons that, in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. The web site may be unavailable at times, due to system maintenance or technical problems.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were notified by letter dated July 10, 2007, sent postage prepaid via USPS.

10. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

/s/ Michelle Maltese  
Rule Reviewer

/s/ Russell E. Cater for  
Director, Public Health and  
Human Services

Certified to the Secretary of State October 29, 2007.